

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

v.

SALVADOR MADRIGAL-MADRIGAL

Defendant.

CR-S-04-102-DFL

MEMORANDUM OF OPINION
AND ORDER

Salvador Madrigal Madrigal, a federal prisoner, brings this motion for sentence reduction under 28 U.S.C. § 2255. In 2004, Madrigal pleaded guilty to charges of illegal entry into the United States and violation of supervised release. Madrigal was sentenced to 51 months in prison, plus 36 months of supervised release. Madrigal's supervised release contained the condition that he would be surrendered to the INS for deportation proceedings upon release from prison, and, if deported, Madrigal would not be able to re-enter the country without the express consent of the United States Attorney General.

1 Madrigal now files his first § 2255 motion, raising three
2 issues. None of Madrigal's claims has merit.

3 First, he asserts that he is being denied his right to
4 participate in a drug rehabilitation program under 18 U.S.C. §
5 3621(e) to reduce his sentence by one year because of his status
6 as an alien.¹ The Bureau of Prisons has interpreted § 3621(e) to
7 require community-based rehabilitation. 28 C.F.R. § 550.58; 65
8 F.R. 80745. The Ninth Circuit has held that excluding prisoners
9 with pending deportation proceedings from participating in
10 community-based drug rehabilitation programs does not violate the
11 Equal Protection Clause because it has a rational basis. McLean
12 v. Crabtree, 173 F.3d 1176, 1186 (9th Cir. 1999) (exclusion on
13 that basis rationally related to goal of preventing persons
14 awaiting deportation from fleeing while participating in community
15 treatment programs).

16 Second, he asserts that he is also being denied his right
17 under 18 U.S.C. § 3583(d) to "half-way house supervision on early
18 release" because of his status as an alien. However, prisoners
19 have no right to early release under § 3583(d).

20 Finally, Madrigal challenges his sentence based on Blakely v.
21 Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004). Madrigal's plea
22 agreement precludes this claim for several reasons. First,
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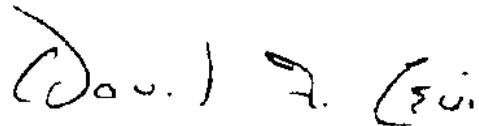
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25 ¹ This claim is properly brought under 28 U.S.C. § 2241, not
26 § 2255 motion. See, e.g., McLean v. Crabtree, 173 F.3d 1176 (9th
Cir. 1999); United States v. Recinos-Gallegos, 151 F.Supp.2d 659,
660 (D. Md. 2001).

1 Madrigal waived his right in the plea agreement to challenge the
2 validity of his conviction or sentence under § 2255 or § 2241.
3 Second, he specifically waived any Blakely rights by consenting to
4 judicial factfinding in his plea agreement. See Blakely, 124
5 S.Ct. at 2541 ("When a defendant pleads guilty, the state is free
6 to seek judicial sentence enhancements so long as the defendant
7 either stipulates to the relevant facts or consents to judicial
8 factfinding."). Third, Madrigal stipulated to the facts forming
9 the basis for the plea. See id.

10 For the above reasons, Madrigal's motion for sentence
11 reduction is DENIED.²

12 IT IS SO ORDERED.

13 Dated: 9/14/2005
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17 DAVID F. LEVI
18 United States District Judge
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24 ² On August 15, 2005, Madrigal filed an amended motion to
25 vacate under § 2255. The court has reviewed this motion.
26 Madrigal has simply resubmitted his initial February 28, 2005
motion; therefore, Madrigal's August 15, 2005 motion for sentence
reduction is also DENIED.